

**IN THE MATTER  
OF  
MICHAEL JOVANOVIĆ**

Appearances: Karen Beth Gray, Esq.  
Counsel for Petitioner

Paul R. Collier, III, Esq.  
Counsel for Respondent

Commissioners: Wagner, Ch., Cassidy, Roach and Dolan

Presiding Officer: Commissioner R. Michael Cassidy, Esq.

**DECISION AND ORDER**

**I. Procedural History**

On May 30, 2001, Petitioner initiated these proceedings by issuing an Order to Show Cause (Order) under the Commission's Rules of Practice and Procedure.<sup>1</sup> The Order alleged that Respondent, Michael Jovanovic (Jovanovic) violated G. L. c. 268A, § 2(a) by corruptly offering money to a Department of Medical Assistance (DMA) financial assistance social worker in an attempt to influence her actions concerning Jovanovic's brother's application for DMA financial assistance during a meeting in or about September 2000. The Order also alleged that Jovanovic violated G. L. c. 268A, § 3(a), under the same facts, by offering more than \$50 to the same DMA financial assistance social worker for or because of her official acts concerning Jovanovic's brother's application for DMA financial assistance on or about September 2000.

On July 3, 2001, Jovanovic filed an Answer to the Order. A Pre-hearing conference was held on August 29, 2001. On November 14, 2001, the parties submitted joint Stipulations of Fact and Law. An evidentiary hearing was held on November 27, 2001. After the conclusion of the evidentiary portion of the hearing, the parties submitted legal briefs on February 12, 2002. The parties presented closing arguments before the full Commission on February 27, 2002.<sup>2</sup> Deliberations began in executive session on February 27, 2002.<sup>3</sup>

In rendering this Decision and Order, each undersigned member of the Commission has considered only the testimony, evidence in the public record, including the hearing transcript, and arguments of the parties.<sup>4</sup>

**II. Findings of Fact**

1. Jovanovic is a private citizen residing in Quincy. He is 81 years of age and grew up in Yugoslavia. Jovanovic has resided in the United States for over fifty years. He testified, under oath during the hearing, that he has degrees from four American colleges, including having worked on masters and doctoral degrees; that he is qualified to teach five foreign languages; has a real estate license; and that he has run for election to the school committee and for mayor of Quincy.<sup>5</sup>

2. In 1997, Jovanovic's brother, Zarko Jovanovic (Zarko) sold his home for \$140,000 and moved in with Jovanovic.

3. The assets from the sale of Zarko's home were put into a joint account in the names of Zarko and Jovanovic (Joint Account).

4. The monies in the Joint Account were Zarko's only assets.

5. On January 4, 2000, following a severe decline in his health, Zarko entered the Elihu White Nursing Home.

6. Zarko stayed at the Elihu White Nursing Home from January 4, 2000 through October 15, 2000.

7. On or about January 2000, Jovanovic took the bulk of the money from the Joint Account (approximately \$200,000) and put it into accounts in only Jovanovic's name.

8. Jovanovic was liable for Zarko's bills for the Elihu White Nursing Home.<sup>6</sup>

9. In the spring of 2000, Jovanovic obtained a power of attorney for Zarko.

10. Jovanovic filed the power of attorney with the Massachusetts Department of Medical Assistance (DMA).

11. The DMA is a state agency<sup>7</sup> and its workers are state employees.<sup>8</sup>

12. In March 2000, the Elihu White Nursing Home began attempting to collect from Jovanovic an amount owed on a bill for Zarko's stay.

13. The bills for Zarko's stay were accruing at approximately \$175 to \$185 per day.

14. On July 12, 2000, Jovanovic applied on behalf of Zarko to the DMA for financial assistance.

15. Under the MassHealth regulations, an applicant's eligibility is partly determined by the amount of money he has or has had within the three years prior to his application.<sup>9</sup> To be eligible, an applicant's assets generally may not exceed \$2,000.<sup>10</sup> As a result, for example, if Zarko had \$140,000 in his possession within that three-year period, the regulations would require that he use most of those funds before he would become eligible for MassHealth benefits.

16. On July 12, 2000, Virginia M. Alger (Alger), an eligibility worker for DMA, sent Jovanovic a MassHealth Information Request form, which requested items required for her to process the application.

17. The Information Request form stated that the required items must be sent to DMA by August 10, 2000 and the form stated that the applicant's assets may not exceed \$2,000.

18. Alger has approximately 35 years of experience at DMA and has processed thousands of applications.

19. As the DMA eligibility worker assigned to Zarko's application, Alger had the authority to approve or deny his application.

20. On August 14, 2000, Alger sent Jovanovic a Notice of Denial for MassHealth because the application was missing required information about health insurance, tax returns, bank accounts, burial plan, real estate, vehicle transfers, general income and asset limitation.<sup>11</sup>

21. Later that same day, August 14, 2000, Alger received information about the application from Attorney Michael Loring, who was then representing Jovanovic.

22. Although Alger had denied the application, after receiving additional information from Attorney Loring, she sent another MassHealth Information Request form to Jovanovic on August 14, 2000. Alger, in her words, "re-app'd [the application] because of the information that [she] received from Attorney Loring." As a result, Jovanovic had another opportunity to provide the required information, and this latest Information Request form stated that the information must be sent by September 12, 2000.

23. Either in late August or early September, but sometime after Alger sent the August 14, 2000 Information Request form, Alger first met with Jovanovic at his request. He informed her during that meeting that his lawyer would provide missing verifications but Jovanovic did not provide her any documents nor offer her anything else during that meeting.<sup>12</sup>

24. As of September 2000, Zarko's outstanding bill at Elihu White was approximately \$40,000.

25. On September 12, 2000, Alger met again with Jovanovic at DMA offices.<sup>13</sup>

26. During the September 12<sup>th</sup> meeting (Meeting), Alger and Jovanovic discussed Zarko's case. Only Alger and Jovanovic were present in the specific area in which the Meeting took place, which was an office space or "cubicle" created by dividers that did not reach the ceiling but were approximately eight (8) feet in height.

27. Holly Hampe (Hampe), a friend of Jovanovic, drove him to the Meeting.

28. During some of the Meeting, Hampe sat outside of the office cubicle in which Alger and Jovanovic met.

29. At least twice during the Meeting, Hampe walked away from the cubicle: once to pick up a magazine from a table a few feet away from the cubicle (she estimated approximately 8 feet) and a second time to make a telephone call several feet away from the cubicle (she estimated approximately 12 feet).<sup>14</sup>

30. During the Meeting, Alger explained that DMA did not have everything it needed to process the application. Jovanovic provided her new information about several bank accounts, some of which had been closed, but Alger was unsure about the current status of some of the accounts. She also, during the Meeting, first learned about the existence of another property.

31. After Alger explained that more information was needed to process the application, Jovanovic asked Alger for more time to obtain the required information.<sup>15</sup>

32. Alger next informed Jovanovic that there was a strong possibility that she would have to issue a denial because, notwithstanding that Jovanovic and his lawyers had been trying to get information, she did not have everything DMA required.<sup>16</sup>

33. Alger also explained that, after her denial, Jovanovic would have to fill out another application and start the process again. But she also said that he had the right of appeal, which, she explained, would be an informal process.

34. After Alger explained that there was a strong possibility that she would deny the application, Jovanovic next said, "No appeal." Hampe overheard Jovanovic say that he did not want to appeal, that he wanted everything in then so there would be no need for an appeal.

35. Alger again said that she did not have everything needed to process the application and, Jovanovic said, for the second time, "No appeal."<sup>17</sup>

36. Next, Jovanovic pulled out a sealed, regular business-sized envelope from his suit jacket and passed it across the table to Alger. As he passed her the envelope, he said, "This is for you. You have done more for me than my lawyer has done."<sup>18</sup>

37. Alger handled the envelope and ascertained that it was approximately one-half to three quarters of an inch in thickness, Alger gave the envelope back to Jovanovic and said that she could not accept gifts, especially money. Jovanovic responded, "This is not money." But Jovanovic admitted that he probably had \$100 in the envelope that day.

38. Because Alger was curious about what was in the envelope, she took the envelope and tore open a corner of it.

39. The envelope contained money, at least \$50. After tearing open a corner of the envelope, Alger saw a five and a zero in the corner of a bill where the denomination appears. Alger believed that the envelope's contents were of equal consistency and felt like an envelope one would take to a bank to make a deposit.

40. Jovanovic offered to pay Alger during the Meeting.<sup>19</sup>

41. After giving the envelope back to Jovanovic, Alger told him, "It is money. I cannot accept this." Alger then got up and left the cubicle and Jovanovic followed her out of the cubicle.

42. Alger perceived that Jovanovic offered her a bribe because she had given him an unfavorable response. She did not perceive that he was offering her a reward because she could not imagine any reason why he would thank her.<sup>20</sup>

43. Alger was upset. Immediately after the Meeting, Alger went to her supervisor, Cheryl Titus (Titus), and reported what happened during the Meeting.

44. Titus observed that Alger was upset<sup>21</sup> by what she reported had happened during the Meeting.

45. Titus reported what Alger told her to Titus' supervisor and the matter was reported to DMA's legal division.

46. On September 15, 2000, Alger sent to Jovanovic a Final Notice of Denial for MassHealth. The Final Notice states that although Jovanovic submitted one or more verifications on August 14, 2001, he did not submit additional necessary verifications within 30 calendar days of August 14, 2001.

49. Sometime after October 15, 2000, Jovanovic paid the Elihu White Nursing Home approximately \$43,000 for Zarko's stay. The money came from funds which had been held in the Joint Account until approximately January 2000.

### ***Credibility***

In addition to the credibility determinations made above, we believe that the following observations must be emphasized because most of Petitioner's allegations turn on the credibility of Alger's and Jovanovic's testimony. With respect to what happened during the Meeting, we find Alger's testimony to be credible for the following reasons. First, very soon after the Meeting concluded, Alger reported the events to Titus, her supervisor. Titus, in turn, testified consistently about what Alger had told her. Next, given the length of Alger's tenure with the DMA, and the fact that Alger has handled thousands of these types of applications, we do not believe that Alger would forget, nor have any motive to fabricate, what occurred. We believe that what occurred during the Meeting was quite unusual in Alger's experience because both Titus and Alger testified that Alger was upset and that Alger testified credibly that something like this had never happened to her in her entire career.

Further, Hampe's testimony about what she was able to hear take place during the Meeting while she sat next to the cubicle, corroborates Alger's version of the events. Hampe admitted that she did not hear everything, because she was away from the cubicle during part of the Meeting.

In general, we find Jovanovic's testimony not to be credible on the most important facts. Although he denied saying to Alger, "No appeal," Alger's testimony on this point is clear and is supported by Hampe's testimony (who is Jovanovic's friend). In addition, he claimed that the subject of an appeal never arose during the Meeting. But, in his deposition testimony, which he adopted during the hearing, he said that he did not want another appeal.

Finally, there is no indication on the DMA forms or in the process Titus and Alger described that the DMA required an application fee. Based on Jovanovic's education and experiences in this country, we do not believe that he would have been confused, based on the DMA information before him, about whether he needed to pay an application fee. Application fees, as such, are typically required at the beginning of the application process, not at the end. Moreover, although Jovanovic testified that the reason he thought he needed to pay an application fee was because he had done so on other matters before other state agencies, he admitted that he had never given other public officials something extra for their official services.

## **III. Decision**

### ***Section 2(a)***

To prove a violation of G. L. c. 268A, § 2(a), the Petitioner must prove the following elements, by a preponderance of the evidence:

- (1) Jovanovic, directly or indirectly, *corruptly* gave, *offered* or promised;
- (2) anything of value;
- (3) to any state employee;
- (4) with intent;
- (5) to influence any official act<sup>22</sup> or any act within the official responsibility<sup>23</sup> of such employee or to do or omit to do any act in violation of his lawful duty.<sup>24</sup>

At all relevant times, Alger was a state employee, as defined under the conflict law. There is no dispute that something of value was at hand during the Meeting because the parties have stipulated that there was money in an envelope which was placed on the table between Alger and Jovanovic.

The next issue is whether Jovanovic gave, offered or promised the money to Alger. Although Jovanovic denied, under oath during the hearing, that he passed the envelope to Alger, he admitted to asking her how much he owed. As we discussed above, we believe Alger's testimony that Jovanovic passed her the envelope and that he said that it was for her. The evidence does not contradict Alger's testimony that something of value was offered to her.<sup>25</sup> Although Jovanovic testified that he regularly carried \$100 or more in an open envelope in his jacket pocket, we cannot ignore that the most credible evidence supports the conclusion that Jovanovic offered Alger money, regardless of whether *he* believed that the envelope was sealed or open. In light of Alger's and Titus' consistent testimony, and Jovanovic's inconsistent testimony, we do not believe his explanation that his open envelope containing money inadvertently fell out with the papers he brought to the Meeting.

Further, Petitioner must also prove that there was an "official act" or "any act within [Alger's] official responsibility" or that there was an act, or the failure to do an act, in violation of her lawful duty, that Jovanovic intended to influence. Both Alger and Jovanovic's testimony concur that he wanted more time to obtain information for the application. The fact that she allowed him more time after the August 14, 2000 denial by, that same day, allowing the application to be "re-app'd" demonstrates that her allowing more time was an act within her official responsibility. Although his statements "no appeal" could equally support an inference that he was asking for approval, we conclude that stronger evidence supports the inference that he wanted more time to provide information at Alger's level, rather than have his application move to another stage, appeal, and have the appeal stage consider the application as it was.

Finally, we consider whether Jovanovic "corruptly" offered money "with intent to influence any official act or any act within the official responsibility of" Alger or "to do or omit to do any act in violation of" her "lawful duty." The Supreme Judicial Court has said, that "bribery requires proof of 'corrupt intent'. . . Bribery also typically involves a quid pro quo, in which the giver *corruptly* intends to influence an official act through a 'gift', and that gift motivates an official to perform an official act. In effect, what is contemplated is an exchange, involving a two-way nexus." <sup>26</sup>

"Corrupt" has been defined as "of debased political morality: characterized by bribery, the selling of political favors, or other improper political or legal transactions or arrangements."<sup>27</sup>

“Bribe” is defined as “a price, reward, gift, or favor bestowed or promised with a view to pervert the judgment or corrupt the conduct esp. of a person in a position of trust (as a public official).”<sup>28</sup> We observe that in reported decisions involving criminal violations, the facts reported generally describe completed bribes, rather than offers that were declined.<sup>29</sup> We also observe that intent may be formed very shortly before the offer is made; it need not be formed, for example, days or hours prior to the offer. What the Supreme Judicial Court has said, in interpreting § 3, is equally applicable to § 2. “We recognize that direct evidence regarding either the intent to influence a specific act or that an official was influenced in the undertaking of a specific act is difficult to obtain. In these circumstances, therefore, ‘the trier of fact can do no more than ascribe an intent [to influence or be influenced] on the basis of the circumstances surrounding ‘the gift.’”<sup>30</sup>

The key point is whether Jovanovic had the intent to influence any official act or any act within Alger’s official responsibility, or to influence her to do or omit to do an act in violation of her lawful duty. By its nature, the offering of money to influence an official’s act, when there is no lawful basis for making an offer of money, is corrupt. The DMA application process does not involve application fees of any type. The DMA forms provided to Jovanovic do not call for an application fee. Moreover, Alger never asked Jovanovic to pay any type of application fee. We emphasize the sequence of events during the Meeting to demonstrate Jovanovic’s intent.

First, after Alger told him that she would not approve the application, he said, “No appeal,” twice, *then handed* her a *sealed* envelope containing money. Jovanovic then said, “This is for you. You have done more for me than my lawyer has done.” Alger declined to accept the envelope. Jovanovic then said, “It’s not money.”<sup>31</sup> Because we believe that Alger’s testimony accurately reflects the events, we conclude that Jovanovic offered her something to exert influence on her. It is not reasonable to conclude that one would offer something of value as thanks for an undesired official result. Even if Jovanovic went to the Meeting genuinely believing that Alger had official discretion to allow additional extensions because she had done so before, he would still have had *corrupt* intent by offering her money to obtain more time after she refused to allow additional time.

Next, what Jovanovic asked Alger to do, or not do, also supports our inference about his intent. Both Alger and Jovanovic’s testimony agree that he wanted more time to provide the required information. Jovanovic did not want the application to proceed to the appeal stage of the process. All the testimony concurs that during the Meeting, he wanted more time and asked for more time.

Finally, Jovanovic had a significant economic incentive to obtain MassHealth coverage for Zarko. He was being billed for Zarko’s costs at the Elihu White Nursing Home. Jovanovic was legally obligated to pay those costs after having taken sole possession of the funds that were in the Joint Account.<sup>32</sup>

From all of these circumstances, we conclude, that Petitioner has proved, by a preponderance of the evidence, that Jovanovic had corrupt intent when he offered Alger money during the Meeting. Considering the circumstances, the credibility of Petitioner’s witnesses, the corroborating evidence, and the lack of credibility in Jovanovic’s testimony, we find that the Petitioner has proved, by a preponderance of the evidence, all the elements of § 2(a).

### **Section 3(a)**

To prove a violation of § 3(a), the Petitioner must prove the following elements by a preponderance of the evidence:

- (1) Jovanovic, directly or indirectly, gave, *offered* or promised:
- (2) anything of substantial value;
- (3) to a state employee;
- (4) for or because of any official act;
- (5) performed or to be performed by such an employee.

The Supreme Judicial Court has held that “it is necessary to establish a link between a gratuity and an official act.”<sup>33</sup> In general, “a gratuity in violation of [§3] . . . can either be provided to an official as a reward for past action, to influence an official regarding a present action, or to induce an official to undertake a future action.”<sup>34</sup> “There must be proof of linkage to a particular official act, not merely the fact that the official was in a position to take some undefined or generalized action.”<sup>35</sup>

We begin with the issue of whether the gift or gratuity was of substantial value.<sup>36</sup> The evidence about how much money Jovanovic typically carried and how much he believed he had in the envelope on September 12, 2000 supports Alger’s testimony that she saw a bill with “50” in the corner, after having ripped open the corner of the envelope. In addition, her testimony regarding the thickness of the envelope supports the inference that there was more money in the envelope than a single \$50 bill. Based on this evidence, we conclude that the Petitioner has proved, by a preponderance of the evidence, that the envelope contained something of substantial value.<sup>37</sup>

Further, the same evidence that proves that there was an offer for purposes of § 2(a), also proves, by a preponderance of the evidence, that, for purposes of § 3(a), Jovanovic made an offer to Alger.

We next consider whether the offer of substantial value was “for or because of any official act” Alger performed or would perform. Again, the timing of the events during the Meeting and the circumstances surrounding the Meeting must be considered to determine whether there is evidence of a link, as *Scaccia* requires. The relevant official acts are: (1) the services she performed in helping him complete the application and/or (2) allowing him additional time. Jovanovic admitted that he offered her a reward for her official acts in reviewing the application and helping him complete the application. As described above regarding § 2, the evidence also proves that the offer of the money was for or because of his desire that Alger allow more time.

Although he testified that he was not sure what her official duties were and that she may have done something extraordinary, as if to suggest that he was not offering anything for an “official act,” his testimony does not contradict Alger’s testimony about his wanting to thank her for doing more than his lawyer had done. Notably, his deposition testimony is less equivocal--- “I was willing to give her a reward for what she did . . . I was anxious that all documents are there and that application was complete and somebody who works there is going to help me.” Again, as we emphasized above in analyzing § 2(a), given his education, time and experience in this country, we do not find his testimony about thinking he needed to pay an application fee to be



credible. Moreover, nothing in the forms he completed that are exhibits to the record indicates that DMA imposes application fees.

Jovanovic admitted to wanting to thank her for doing more than his lawyer had done, while denying, during the hearing, that he offered her a gift to obtain more time. There is a preponderance of evidence, by his own words, that he offered her something of substantial value as a reward for her official acts. Accordingly, he has admitted to violating § 3, under the criteria set forth in *Scaccia*. In addition, considering the circumstances involving Jovanovic's desire to obtain more time to complete the application, there is a preponderance of evidence that he offered money of substantial value for or because of her official act to allow him additional time.

#### **IV. Conclusion**

In conclusion, Petitioner has proved, by a preponderance of the evidence, that Michael Jovanovic violated G. L. c. 268A, § 2(a) by corruptly offering, something of value to a state employee with intent to influence the state employee's official actions regarding an application for DMA benefits. In addition, Petitioner has also proved, by a preponderance of the evidence, that Michael Jovanovic violated G. L. c. 268A, § 3(a), by offering the same state employee something of substantial value for or because of official acts performed or to be performed by her.

We conclude that, in these circumstances, the same conduct violated both §§ 2(a) and 3(a). The differences between the two violations are that the § 2 violation required evidence of Jovanovic's corrupt intent and did not require evidence of substantial value, while the § 3 violation was proved by including evidence of substantial value but did not require evidence of corrupt intent.<sup>38</sup> In general, a private party's offering money to influence the official actions of a public employee is egregious conduct under either §§ 2(a) or 3(a). The Legislature created §§ 2 and 3 to prevent both private parties and public employees from considering that bribes or private rewards for, or because of, an official act have any role in governmental decision-making.

#### **V. Order**

Pursuant to the authority granted it by G. L. c. 268B, § 4(j), the Commission may impose a civil penalty of up to \$2,000 for each violation of G. L. c. 268A. In determining a penalty, we consider mitigating and exacerbating factors. We note that Jovanovic's brief makes much of the circumstances surrounding Zarko's declining health and the hardship Jovanovic endured as his primary care giver. We also consider that Jovanovic's offer was not accepted and the record does not indicate that his having made the offer affected DMA's final decision about Zarko's application. Finally, there is no evidence that Jovanovic made other offers on other occasions to Alger or any other DMA official.

We have not, however, found Jovanovic's explanation that he offered to pay an application fee to be credible. Similarly, his alternative explanation that he offered to reward Alger, though an admission of liability for purposes of § 3(a), strikes us as an expedient excuse, which he likely developed after it became clear that his denying the existence of any type of offer of money to Alger would not be found credible. Jovanovic is exceptionally well-educated and has resided in the United States for a long time. His experience in this country and conduct during the hearing do not suggest that he was unable to understand American English or that he failed to understand what was appropriate conduct in his dealings with the DMA.

Considering all of these circumstances, we order Michael Jovanovic to pay a civil penalty in the amount of \$2,000 (two thousand dollars) to the State Ethics Commission within thirty (30) days of his receipt of this Decision and Order. This civil penalty applies equally to his violation of § 2(a) or § 3(a) because his conduct was sufficiently egregious to warrant the maximum civil penalty under either section. As such, even if his conduct were deemed to violate § 3(a) only, we would impose the same \$2,000 civil penalty.

**DATE: March 19, 2002**

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<sup>1</sup>930 CMR §§ 1.01(1)(a) *et seq.*

<sup>2</sup>930 CMR § 1.01(9)(e)(5).

<sup>3</sup>G. L. c. 268B, § 4(i); 930 CMR § 1.01(9)(m)(1).

<sup>4</sup>Counsel for Petitioner was not involved in any way in the Commission's deliberations.

<sup>5</sup>We do not find, and Jovanovic's counsel has not argued, that Jovanovic has difficulty understanding American English.

<sup>6</sup>Jovanovic admitted during the hearing that he was liable for Zarko's Elihu White Nursing Home bill. The Executive Director of Nursing Home understood that Jovanovic was the responsible party, from whom the Nursing Home would be seeking payment of a bill if other benefits such as Medicare or Medicaid were exhausted.

<sup>7</sup>"State agency, any department of a state government including the executive, legislative or judicial, and all councils thereof and thereunder, and any division, board, bureau, commission, institution, tribunal or other instrumentality within such department, and any independent state authority, district, commission, instrumentality or agency, but not an agency of a county, city or town." G. L. c. 268A, § 1(p).

<sup>8</sup>"State employee, a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis . . ." G. L. c. 268A, § 1(q).

<sup>9</sup>*See also* 130 CMR §§ 520.019(B) and (G)(1).

<sup>10</sup>*See also* 130 CMR § 520.003.

<sup>11</sup>At the top of the form appears "Notice of Denial for MassHealth." It was addressed to Zarko Jovanovic c/o Michael Jovanovic.

<sup>12</sup>We note that both Alger's and Jovanovic's testimony during the hearing concur on these points.

<sup>13</sup>On the morning of September 12, 2000, Jovanovic called Alger to ask to meet with her, stating that he had some things that were pertinent to the application or to eligibility.

<sup>14</sup>Although Hampe could hear Alger and Jovanovic while she sat next to the cubicle, she did not hear what Alger and Jovanovic said while she made the telephone call. During the Meeting, Hampe did not see Alger and Jovanovic inside the cubicle and did not see what was happening in the cubicle.

<sup>15</sup>We note that Alger's, Jovanovic's, and Hempe's testimonies concur on this point.

<sup>16</sup>We note that Alger's, Jovanovic's and Hempe's testimonies concur on this point.

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<sup>17</sup>Although Jovanovic denied during the hearing that he said the words, “no appeal,” and, notably, denied that the subject of an appeal ever arose during the Meeting, we do not find his testimony credible on this point because Alger consistently testified that he said those words; immediately after the Meeting Alger reported this account to her supervisor; and, notably, Jovanovic’s friend, Hampe, heard him say that he did not want to appeal. Moreover, Jovanovic’s version contradicted his deposition testimony, admitted into evidence, in which he said, “I said I would like all the documents to be in now. I don’t want another appeal.”

<sup>18</sup>Jovanovic denied, under oath during the hearing, that he passed a *sealed* envelope to Alger. Instead, he explained that he regularly carries money in an unsealed envelope and that the unsealed envelope came out on the table as he pulled documents out of his pocket. His testimony was consistent about his carrying money in an envelope, though his testimony was vague and somewhat inconsistent with his prior deposition testimony about how much money he typically carries in an envelope.

Alger, testified consistently about her handling a sealed envelope and having torn open a corner of envelope to ascertain its contents. She reported this information to her supervisor, immediately after the incident, who also testified consistently about these facts. If the envelope that Alger handled had been open, we do not believe that Alger would have been mistaken about whether the envelope was sealed. Common sense dictates that an unsealed envelope in which one regularly carries money would readily appear to be open, rather than sealed, upon handling. Moreover, Alger’s testimony, as described below, consistently said that she tore open a corner. Accordingly, we find Alger’s testimony about the envelope being sealed to be more credible than Jovanovic’s. We also note that the parties agreed in their joint Stipulation that “a white envelope from a pocket of Jovanovic’s suit jacket was placed on the table.”

<sup>19</sup>Jovanovic admitted that he asked her how much he owed. Jovanovic admitted that he asked her “what application fee she wanted, and also a reward for something doing extra out of her ordinary work.”

“Q. And you said that you were trying to give her a reward because she had done something nice to you and you said that --A. I thought that she did extraordinary. I was not sure whether this was a part of her job, but she corrected me and she said this is her job. As I said, I thought I might need something for having done extra for me that she does not do for others.”

Jovanovic testified “because Virginia Alger helped me more than my lawyer did, she was exceptionally nice. She was exceptionally thorough, more than the average American officials that I have met since I arrived to this country 50 years ago. And so, I felt I should respond. I should respond if I need application fees, I respond for a special card that the lawyer did not show till the end of that day. And I ask her, ‘How much do I owe you?’ She says, ‘Sir, you don’t owe anything. This is my job.’” He testified that he told her she did more for him than his lawyer had done.

In his deposition, Jovanovic testified: “I was willing to give her reward for what she did and my question — direct question was ‘How much do I owe you?’ and she said that I don’t owe her anything. Q. You said you were willing to give her a reward. What is it that she did for you that would entitle her to extra compensation — to money? A. I already was denied on one occasion because of the lack of documentation and also because of the documentation was not complete. I was anxious that all documents are there and that application was complete and somebody who works there is going to help me. The lawyer did not do it.”

<sup>20</sup>Alger testified, “The only thing that I can tell you is: Was it a bribe? I *can’t* use that word strongly. I can only say that I was taking a negative action against the case. Also, at that point, there were going to be months that were going to be forfeited because we could only go back three months from the date of the next application. Was he thanking me for doing something unjust to him or something against his will? Was he thanking me because — you know, he didn’t want to go to appeal? I don’t know. That, you would have to ask Michael. But I can’t imagine that he would be thanking me for anything at that point.”

During the hearing, Jovanovic adopted his deposition testimony, during which he was asked what he wanted to have happen on the day of the Meeting. He answered: “If it were not there. If all the documentation were not there I might

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be denied. Oh, and I would have the right to appeal. I said I would like all of the documentation to be in now, I don't want another appeal. Now, from this letter, this no appeal or not — if she misunderstood that I wanted positive solution on the problem and did not care about appeal. I did not want another appeal because I wanted all documentation and all application to done as it should be. There was a delay. I wanted things done.”

In addition, Hampe overheard Jovanovic say to Alger during the Meeting that the Elihu White nursing home was asking him to pay it and she heard Jovanovic state that he needed the application to go through.

<sup>21</sup>Titus noticed that Alger's face was white and that she was shaken.

<sup>22</sup>“Official act, any decision or action in a particular matter . . . .” G. L. c. 268A, § 1(h).

<sup>23</sup>“Official responsibility, the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action.” G. L. c. 268A, § 1(i).

<sup>24</sup>In pertinent part, § 2(a) states: “Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any state . . . employee . . . or who offers or promises any such employee . . . to give anything of value to any other person or entity, with intent: (1) to influence any official act or any act within the official responsibility of such employee . . . or (3) to induce such an employee . . . to do or omit to do any act in violation of his lawful duty . . . shall be punished by a fine . . . .”

<sup>25</sup>Jovanovic also admitted that he was willing to give her a reward for what she did.

<sup>26</sup>*Scaccia v. State Ethics Commission*, 431 Mass. 351, 356 (2000). *See also United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 404-405 (1999) (“The distinguishing feature of each crime is its intent element. Bribery requires an intent ‘to influence’ an official act . . . while illegal gratuity requires only that the gratuity be given or accepted ‘for or because of’ an official act. In other words, for bribery there must be a *quid pro quo*—a specific intent to give . . . something in exchange for an official act. An illegal gratuity, on the other hand, may constitute merely a reward for some future act . . . or for a past act.”).

We note that an offer that is accepted, completes the two-way exchange, but an offer to give a bribe also violates § 2, because it *contemplates* an exchange.

<sup>27</sup>*Websters Third New International Dictionary* (1993).

<sup>28</sup>*Id.*

<sup>29</sup>*See e.g., Commonwealth v. Dutney*, 4 Mass. App. Ct. 363, 367 (“I understand in politics that if you have something and I want that something, I have to pay for that something. Why should I make money and you people who gave that certain thing, not make anything on the deal?”) [He] repeated the terms of the deal he had proposed the day before, stating again that he could guarantee the votes of his brother Robert and of Dutney . . . . [He] left the meeting and proceeded to his brother Robert's apartment, where he gave Robert \$500 . . . .”); *Commonwealth v. Tobin*, 392 Mass. 304 (1984) (direct evidence of “kick backs”); *Commonwealth v. Hurley*, 311 Mass. 78, 79-80 (1942) (defendant had applied to obtain the city contract to provide insurance, sent telegrams to city officials that communicated offer; admitted that he sent telegrams but offered an alternative explanation and, two months later, denied knowing anything about the telegrams; court held that jury could find defendant was anxious to get the contract, sent the telegrams to officials who made up majority of selection committee, jury could consider defendant's evasive and equivocal conduct and his admittedly false explanation of the purposes of the telegrams). *Commonwealth v. Shaheen*, 15 Mass. App. Ct. 302, 304 (1983) (defendant's agent asked public official, “Can you be of any aid to me in regards to . . . this fine?” Agent later paid official.); *Commonwealth v. Favulli*, 352 Mass. 95 (1967) (clear understanding among the parties and money was exchanged).

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<sup>30</sup>*Scaccia* at 357.

<sup>31</sup>His statement, “it’s not money,” is not a reasonable response to her refusal of his offer when there is no doubt that the envelope contained money. We infer, therefore, that the only reasonable purpose for Jovanovic to make that statement was that he was attempting to extricate himself from his corrupt offer after he learned that Alger would not accept.

<sup>32</sup>Robert Nolan was the executive director of Elihu White and testified that Jovanvic was the responsible party for Zarko. (Transcript p. 86).

<sup>33</sup>*Scaccia* at 355.

<sup>34</sup>*Id.* at 356.

<sup>35</sup>*Id.*

<sup>36</sup>Anything worth \$50 is of “substantial value” for purposes of § 3. *Life Insurance Association of Massachusetts, Inc. v. State Ethics Commission*, 431 Mass. 1002, 1003 (2000).

<sup>37</sup>431 Mass. 1002, 1003.

<sup>38</sup>*See e.g. Commonwealth v. Dutney*, 4 Mass. App. Ct. 363, 376 (1976) (citing to *U.S. v. Brewster*, 506 F. 2d 62, 67-74 (D.C.Cir 1974), which considered the federal counterparts, 18 U.S.C. §§ 201 (c)(1) and 201(g)) (“If the jury wished to reject the evidence of corrupt intent, they could properly find a violation of . . . § 3(b).” *Dutney* at 369); *Commonwealth v. Burke*, 20 Mass. App. Ct. 489, 508-509 (1985) and compare *Salemme v. Commonwealth*, 370 Mass. 421, 423 (1976) (“It is clear that both offenses arose out of a single transaction. That alone is not determinative, however, for a single act may be an offense against two statutes. If each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt . . . from prosecution and punishment under the other.” But “if one offense charged is a lesser included offense within the other offense charged, punishment for both is precluded.”).